

* **HIGH COURT OF DELHI : NEW DELHI**

+ **CS(OS) No.912/2002**

Judgment reserved on: January 15, 2007

% Judgment delivered on: February 15, 2007

A.Rajagopalan Petitioner
Through: Mr. Raman Kapur, Advocate

versus

Canara Bank Respondent
Through: Mr. A.K.Sharma, Advocate

CORAM

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. By this order, I am proceeding to decide the issue with regard to the maintainability of the present suit in the light of the provision contained in Section 18 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (The Act). This Court on 19th

October, 2006 had directed the matter to be listed for hearing on this issue on 15th January, 2007, and I have heard the parties on the same.

2. The admitted facts are that M/s. Vidya International were sanctioned various loans and limits by the defendant bank in the year 1981. Since the said loan along with the outstanding interest was not repaid, the defendant Bank instituted Civil Suit No. 545/1984 in this Court for recovery of its dues. In that suit, the plaintiff, herein, was impleaded as defendant no.2 in the capacity of an authorised signatory of the firm M/s. Vidya International and also as a guarantor who had undertaken to personally repay all the dues of the firm, M/s. Vidya International upto the tune of Rs. 20 Lacs. In relation to the plaintiff, herein, in the suit filed by the defendant bank, the following averments were made in paragraph 18 :-

“That the second defendant is also liable for the sums due to the plaintiff against the packing credit Bill Discount facility and temporary overdraft facility in her current account granted to the first defendant by the plaintiff and amounting to Rs.12,32,333.19 as aforesaid with upto date interest, in his capacity as guarantor of the first defendant.”

3. A common written statement was filed in the said suit by both the defendants, that is, M/s Vidya International and Sh. A. Rajagopalan. In relation to Sh. A. Rajagopalan (defendant no. 2 in the suit), it was stated in para 5 of the preliminary objections as follows:-

“That the defendant no.2 is not a guarantor of defendant no. 1. The blank papers sent by plaintiff

for the guarantee to be executed by the defendant no. 2 are still with the defendant no.1 and the same were not filled and executed by the defendant no.2. The alleged guarantee filed by the plaintiff is a false and fabricated one. The plaintiff is thus liable for perjury for fabricating false documents in a judicial proceedings. Even other wise, it does not sound to reason the that defendant no.2, without any immovable or movable assets could stand guarantee for Rs.20 Lakhs and how the plaintiff bank had accepted his guarantee for such a big sum. Thus the defendant no.2 not being the guarantor of defendant no.1 he has been falsely and unnecessarily impleaded in this case. The suit is thus liable to be dismissed for mis-joinder of an unnecessary party. The plaintiff should have made E.C.G.C. as party instead of falsely implicating of defendant no.2."

4. On the pleadings of the parties, this Court framed issues in the said suit on 30th October, 1986. Issue Nos. 6 & 7 as framed read as follows:

"6. Whether the defendant no.2 stood guarantee for defendant no.1 as alleged by the plaintiff?

7. Whether the cash credit agreement and other documents allegedly executed by the defendant nos.1 and 2 were signed in blank by them and these documents were later fabricated by the plaintiff as alleged by the defendants in their written statement?"

5. Upon the enactment of The Act the said suit was transferred before the Debt Recovery Tribunal, Delhi (The Tribunal) and registered as OA No. 589/1995. The Original Application came up before the Tribunal on 10th May, 1999, when the plaintiff herein appeared on his own behalf as also on behalf of the firm, M/s. Vidya International. The Tribunal heard the parties and allowed the Original

Application. In relation to the defence set up by Sh. A. Rajagopalan (defendant No.2 in the suit/Original Application), the Tribunal observed that his defence was that his signatures were obtained on the blank paper. The Tribunal held that this is not a tenable defence in view of the judgment of this Court in the matter of **Punjab & Sindh Bank Vs. Ram Prakash, Jagdish Chander (ii) 1992 BC 471**, and Another decision of this Court in **Indian Bank Vs. M/s. Cheese Wafers (India) Private Limited** 76 (1998) DLT 892.

6. The firm M/s. Vidya International and Mr. A. Rajagopalan (plaintiff herein) preferred an appeal before the Debts Recovery Appellate Tribunal (The Appellate Tribunal) bearing No. 188/2000. In this appeal, the Appellate Tribunal vide order dated 17.1.2001 directed the appellants before it to deposit an amount of Rs. 7 Lacs with the Bank within four weeks failing which it was directed that the appeal would not be entertained. That order was challenged by the appellants, namely, M/s. Vidya International and Mr. A. Rajagopalan, firstly, before this Court, and upon not succeeding in getting any relief, before Hon'ble Supreme Court. The Supreme Court rejected the Special Leave Petition filed by M/s. Vidya International and Mr. A. Rajagopalan on 8.10.2001 by passing the following order :-

“ We are not inclined to interfere with the order under challenge. The S.L.P. is dismissed. However, in the circumstances of the case, a week's time from

today is granted to the petitioners to comply with the order of the appellate authority.”

7. However, the appellants did not comply with the direction to deposit Rs. 7 Lacs and the Appellate Tribunal vide order dated 4.1.2002 dismissed the appeal on the ground that the appellants have not complied with the provisions of Section 21 of The Act.

8. Thereafter, the plaintiff has filed the present suit seeking a declaration that he is not bound by the guarantee agreement dated 21.8.1981 and the covering letter of the same day and that these documents do not relate to the plaintiff in suit No. 545/1984 and O.A. No. 589/95.

9. The defendant, Canara Bank had filed their written statement raising a preliminary objection to the maintainability of the present suit by relying upon Section 18 of The Act which reads as follows :-

“18. Bar of Jurisdiction. - On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17.”

10. Section 17 of the said Act states that the Tribunal shall exercise on and from the appointed day, jurisdiction, power and authority to entertain and decide applications from the Banks and Financial Institutions for Recovery of Debts Due to such Banks and

Financial Institutions.

11. Learned counsel for the plaintiff contends that the jurisdiction of a Civil Court to entertain a suit like the present is not barred in a case where the Tribunal while deciding to the Original Application has not complied with the provisions of the Act and the Tribunal has not acted in conformity with the fundamental principles of Judicial Procedure. He submits that the Tribunal has failed to even consider the defence set up by the plaintiff herein in the proceedings before it that the agreements and documents executed by him were signed by him in blank and that they were subsequently fabricated by the bank. He submits that specific issues were framed as aforesaid on the basis of the averments made in the written statement.

12. He places reliance on the decision of the Supreme Court in ***Dhula Bhai etc. vs. State of Madhya Pradesh and Another*** AIR 1969 SC 78 wherein the Hon'ble Supreme Court laid down, inter alia, following principle regarding exclusion of jurisdiction of a Civil Court.

“Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.”

13. On the other hand, the submission of learned counsel for the defendant is that the Act is a special law, enacted by the Parliament for the establishment of Tribunals for expeditious adjudication and Recovery of Debts Due to Banks and Financial Institutions. The Statement of Objects and Reasons of the Act, inter alia, states that Banks and Financial Institutions at present experience, considerable, difficulties in recovery of loans and enforcement of securities charged with them. The existing procedure for Recovery of Debts Due to Banks and Financial Institutions had locked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time.

14. The Act provides for the establishment of the Tribunal under Section 3. The Appellate Tribunal is constituted under Section 8 of the same Act.

15. Learned counsel for the defendant further submits that Section 18 of the said Act clearly bars jurisdiction of any other Court in relation to matters specified under Section 17 of the Act. Section 17 of the Act states that on and from the appointed day the jurisdiction, powers and authority to entertain and decide applications from the Banks and Financial Institutions for Recovery of Debts Due to such Banks and Financial Institutions shall vest and be exercised by the Tribunal, and that the Appellate Tribunal shall exercise the jurisdiction,

powers and authority to entertain appeals against any order may or deemed to have been made by the Tribunal under the Act.

16. Defendant submits that the Act provides a complete machinery for adjudication of the claims of a Bank or Financial Institutions and there is a complete bar to entertain of any matter in respect of such matters by a Civil Court.

17. The issue with regard to the bar of jurisdiction of a Civil Court under Section 18 of the Act is no longer an open question. The same has been ruled upon by the Hon'ble Supreme Court in **Allahabad Bank v. Canara Bank**, AIR 2000 SC 1535.

18. I may, for the present only refer to the decision of the Calcutta High Court in **State Bank of India vs Madhumita Construction (Pvt.) Ltd. and Others**, AIR 2003 Calcutta 7 wherein paras 16.5 & 16.6 the Court held as follows:-

“16.5.....When the legislature incorporates an overriding effect, it intends that the provisions of such special statute shall be effective even though it might be in conflict with any other statute. Virtually, by reason of Section 34 DRT Act, the curtailment of jurisdiction provided under Section 9 of CPC and Clause 12 of the Letters Patent has been taken care of. The legislature did not stop in enacting Section 17 and 18 DRT Act respectively, creating exclusive jurisdiction and barring jurisdiction, but had proceeded to incorporate Section 31 for transferring all cases pending and Section 34 giving overriding effect to all these provisions under the DRT Act. Thus, the intention is clear and unambiguous. Therefore, it has to be respected and given its due

weight that it deserves. If we read Section 17 and 18 in the light of Section 2(g) along with Section 31 and 34 together, then the position becomes absolutely clear. The legislature had not only once but had repeatedly, in a guarded manner, expressed its intention in clear and unequivocal language providing a protective umbrella to make its intention explicit, that such matters are to be adjudicated upon by the Tribunal and not by Courts and that such intention of the legislature would be supreme and that the DRT Act would govern the field in relation to the subject-matter with which DRT Act deals and all other law has to yield to it.

16.6 In *Allahabad Bank v. Canara Bank*, AIR 2000 SC 1535, the Apex Court had held that the jurisdiction of the Tribunal in regard to adjudication is exclusive, the Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions. The provisions of Section 17 and 18 of DRT Act are exclusive so far as the question of adjudication of the liability within the scope of the Act. It had held that while the liabilities adjudicated under Section 17, the banks and financial institutions are not supposed to go to the Civil Court or the Company Court or some other authority outside the Act for the same relief, which could be had under Section 17. It had further held that the overriding provision provided in section 34 is to the extent of consistent with other laws. But the prescription of an exclusive Tribunal both for adjudication and execution is a procedure clearly inconsistent with realization of the debt in any other manner. The adjudication of liability is within the exclusive jurisdiction of the Tribunal. No other Court or authority much less the Civil Court or the Company Court can go into the said question relating to such liability except as provided in DRT Act."

It is, therefore, clear that the Tribunal has exclusive jurisdiction to determine issues relating to the liability owed to a bank

or financial institution.

19. The issue that now arises is, what is meant by ***“Fundamental Principles of Judicial Procedure”*** and whether in the facts of this case, can it be said that the Tribunal while passing the order dated 10.5.1999 has not complied with the ***“Fundamental Principles of Judicial Procedure”***?

20. In **Secretary of State v. Mask and Co.**, (1940) 67 Ind App 222, 236, the Privy Council used the aforesaid expression while dealing with the issue of exclusion of jurisdiction of Civil Courts as follows :

“it is also well-settled that that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.”(emphasis supplied).

21. The Supreme Court, in **Firm and Illari Subbayya Chetty and Sons vs. The State of Andhra Pradesh** AIR 1964 SC 322, dealt with the aforesaid observation of the Privy Council in the following words:

“It is necessary to add that these observations, though made in somewhat wide terms, do not justify the assumption that if a decision has been made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on the merits and as

such, it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles or judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute. In what cases such a plea would succeed it is unnecessary for us to decide in the present appeal because we have no doubt that the contention of the appellant that on the merits, the decision of the assessing authority was wrong, cannot be the subject matter of a suit because Section 18-A clearly bars such a claim in the civil courts.” (emphasis supplied)

22. From the aforesaid it is seen that it is the non compliance of a fundamental provision of the statute, which would make the entire proceedings before the Tribunal illegal or without jurisdiction, that can be challenged before a Civil Court. An instance of this could be the entertainment of an application for recovery of debts by the Tribunal, made by an entity which is neither a Bank nor a Financial Institution under the Act. Independent of the aforesaid, the violation of the

fundamental principles of judicial procedure, which tend to make the proceedings illegal and void in contradistinction with a decision on the merits of the dispute, would also be open to challenge in a Civil Court. An instance of a violation of this kind could be a case, where the Tribunal decides a case without notice to, or hearing an adversely affected party. Even in such cases, what can be impugned before the Civil Court would be the decision of the Tribunal.

23. In the present case, the Tribunal while passing the final order in OA No. 589/1995 on 10.5.1999 dealt with the specific plea of the plaintiff herein that his signatures were obtained on blank papers which have been subsequently been fabricated and utilised by the bank for fastening liability upon him as a guarantor. The Tribunal took the view that the said plea did not raise a triable issue. The relevant extract from the order of the DRT dated 10.5.1999 reads as follows:-

“Relying on the judgment of Hon'ble Delhi High Court, I am of the opinion that there appears no triable issue with respect to main borrowers. So far as guarantor is concerned, his defence is that their signatures were obtained on blank paper. This is also not a tenable defence in view of judgment of Hon'ble High Court of Delhi in the matter of Punjab and Sind Bank vs. Ram Prakash Jagdish Chander (II) 1992 BC 471 and latest judgment of Hon'ble High Court of Delhi in the matter of Indian Bank vs. Cheese Wafers (India) Pvt. Ltd. 76 (1998) DLT 892.”

24. I have also perused the two decisions cited by the Tribunal in the case of ***Ram Prakash Jagdish Chander (Supra)*** and ***Cheese***

Wafer India Pvt. Ltd. (Supra). Both these cases relate to summary suits filed under the provisions of Order 37 CPC. In both these cases the defence raised by the defendant in suits filed by the banks were that their signatures had been obtained on blank papers, which had subsequently been forged and fabricated and utilised by the bank to fasten liability upon them. These pleas were taken in the applications seeking leave to defend the suits by the respective defendants. This Court in both cases held that such a plea was a sham, devoid of any force and it could not be said that they raised a triable issue.

25. In the present case, the transactions whereby various facilities and loans were granted by the bank to the firm M/s Vidya International were undertaken in the year 1981. In the suit filed by the defendant bank, the plaintiff herein did not even claim that the letter of guarantee was executed for the loan to be granted to another entity M/s Pooja International. There is nothing on record to show, and no averment had been made by the plaintiff herein in his written statement in the banks suit to claim that he took any steps whatsoever to repudiate his signatures on the so called blank documents contemporaneously. The plaintiff herein merely took the defence in his written statement, filed after nearly 6 years of the signing of the documents, that the signatures were taken on blank documents. Such defence was held by the Tribunal not to raise a triable issue. When one

views the decision of Tribunal in the light of the averments made before it, it cannot be said that the order or decision of the Tribunal had defects or infirmities which go to the root of the order and makes it in law invalid and void. It was an order passed in the exercise of its jurisdiction by the Tribunal on appreciation of the facts and by applying the law as aforesaid.

26. Pertinently it was only before the tribunal that the plaintiff herein for the first time raised the plea that the documents had been signed by him to guarantee a loan to be granted to M/s Pooja International.

27. It is also to be noticed that what is being challenged before this court is not the decision of the tribunal, but the guarantee agreement and the cover letter, by seeking a declaration that the guarantee agreement dated 21st August 1981 and the cover letter of the same day do not relate to the plaintiff in the suit bearing number 545 of 1984 and O.A. No. 589 of 1995 file by the defendant bank. The present plaintiff is in fact seeking an adjudication of his defence that he ought to have taken (but did not take) before this court and thereafter before the tribunal in the proceedings initiated by the defendant bank. That cannot be permitted in the light of section 18 read with section 17 of the Act.

28. In my view when the Act bars the adjudication of a claim by

a bank or a financial institution by any court or authority except the tribunal, it also bars the adjudication of a defence that may be raised to a claim of a bank or a financial institution by a civil court. Under section 19 (5) of the Act, the defendant is required to file a written statement of his defence. The defendant is also entitled to claim a set off and to make a counterclaim if he has any. The tribunal has to decide the claim made before it after consideration of the defence, and if a set off or a counterclaim has been made, after consideration thereof as well.

29. Reliance placed by the plaintiff here on the case of Dhulabhai(supra) is of no avail since the present case does not fall within the realm of non-compliance of the fundamental principles of judicial procedure by the tribunal. At the cost of repetition I may again point out that it is not the decision of the tribunal which is under challenge before this court on the ground that the tribunal has not acted in conformity with the fundamental principles of judicial procedure.

30. The order passed by the Tribunal on the merits of the dispute before it has been affirmed by the Appellate Tribunal with the dismissal of the appeal bearing number 188/2000 and that order of the Appellate Tribunal has become final.

31. In the light of the aforesaid discussion, I have come to the

conclusion that the present suit is clearly barred under section 18 of the Act and is not maintainable. I therefore dismiss the suit with costs quantified at rupees 25,000/-.

February 15, 2007
aruna/mw

VIPIN SANGHI
JUDGE